

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF MALTA
AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA**

1. Delegations representing the Government of the Republic of Malta and the Government of the Republic of India, hereinafter referred to as “the delegations”, met in Brussels on 15th March 2017 to discuss bilateral relations in the field of civil aviation aimed at reviewing and updating the *Agreement between the Government of the Republic of Malta and the Government of the Republic of India relating to Air Services*, hereinafter referred to as the “ASA”, signed on 5th July 1998.
2. The delegations discussed the way forward on the implementation of the “*Agreement between the European Community and the Government of the Republic of India on certain aspects of air services*”, hereinafter referred to as “the Horizontal Agreement”, which was signed in Marseille, France on 28th September 2008.
3. The discussions were held in a cordial and friendly atmosphere, and both delegations expressed their desire to further promote their aeronautical relations in a spirit of cooperation and complete understanding for their mutual benefits. The delegation lists are attached as **Appendix I**.
4. Both delegations took note of the Confidential Record of Discussions signed in Brussels on 8th April 2008 between the representatives of the European Commission and the aeronautical authorities of the EU Member States on the one hand and the Government of the Republic of India on the other. Both delegations also took note of the Horizontal Agreement and the Joint Declaration signed in Marseille, France on 28th September 2008.

Both delegations agreed on the following arrangements:

Implementation of the Horizontal Agreement

5. The Indian delegation reaffirmed India’s commitment to implementing the Horizontal Agreement in accordance with the Confidential Record of Discussions and the Joint Declaration at the earliest possible.
6. In a spirit of cooperation and in order to expedite the implementation of the Horizontal Agreement the Maltese delegation confirmed that the Government of the Republic of Malta accepts and agrees to include the four provisions which concern “Co-operative Marketing Arrangements”, “Intermodal Service”, “Routing Flexibility” and “Cargo Open Skies Policy” which are attached as **Appendix II**.



7. The Maltese delegation advised that these provisions shall be applied with immediate effect within the scope of their administrative competences.

Commercial Agreements

8. The designated airlines of both Contracting Parties shall not be required to enter into any mandated Commercial Agreement for the operation of the agreed services. However, the designated airlines of both sides are free to enter, at their own choice, into commercial/co-operative marketing arrangements for their mutual benefit.

Designation of Airlines

9. Article 3 of the ASA and all the provisions related to it shall be amended to give each Contracting Party the rights to designate one or more airlines for the purpose of operating the agreed services on the specified routes.
10. Both delegations recognised that the EU designation article will automatically come into effect on the entry into force of the Horizontal Agreement in accordance with the Confidential Record of Discussions and the Joint declaration mentioned above.

Revision of Article 12 on Tariffs

11. In the wake of the developments and liberalisation of the air transport market, the existing Article 12 on Tariffs shall be replaced with the text provided in **Appendix III**.

Annex (Route Schedule) to the ASA

12. The Annex attached to the ASA shall be replaced with a revised Annex (Route Schedule) as provided in **Appendix IV**.

Capacity entitlements and Traffic Rights

13. The Indian delegation offered Open Sky to the Malta side, as specified in the Indian National Civil Aviation Policy 2016.
14. The Maltese delegation took note and explained that the Indian National Civil Aviation Policy 2016 will automatically come into effect on the entry into force of the Horizontal Agreement.
15. Notwithstanding the above, it was agreed that the designated airline(s) of either side shall be allowed to operate any number of passenger and/or combination services per week with any type of aircraft, on the respective routes, as contained in the revised route schedule given at **Appendix IV**.
16. The exercise of fifth freedom traffic rights in respect to passenger and/or combination services shall be subject to the approval of the aeronautical authorities of both sides.

New Articles to be included in the ASA

17. The Maltese delegation tabled and proposed two new Articles to be included in the ASA. These Articles concern Aviation Safety and the recommended EU clause related to Fair Competition. While the article on Aviation Safety was accepted by the Indian delegation with minor changes it was agreed that the article on Fair Competition will be studied by the Indian authorities and their response will be sent through diplomatic channels in due course. The agreed text of article on Aviation Safety is at **Appendix V** and draft article on Fair Competition is at **Appendix VI**. In this regard, the delegations agreed that the updating of the ASA shall be pursued after the Horizontal Agreement comes into force.


Entry Into Force


18. This Memorandum of Understanding shall enter into force with immediate effect and shall supersede the earlier Memorandum of Understanding of 3rd April 1997 to the extent applicable.

Done in Brussels on 15th March 2017.

For the Government of
the Republic of Malta

For the Government of
the Republic of India


H.E. Ray Azzopardi
Ambassador of Malta to Belgium


Mr. Arun Kumar
Joint Secretary
Ministry of Civil Aviation

Appendix I

Delegation of Malta

H.E. Ray Azzopardi Ambassador of Malta to Belgium	Head of delegation
Mr. Stefan Muscat First Secretary Embassy of Malta to Belgium	Member
Mr. Ryden Spiteri Policy Officer – Aviation & Intermodal Transport Permanent Representation of Malta to the EU	Member

Delegation of India

Mr. Arun Kumar Joint Secretary Ministry of Civil Aviation	Head of delegation
Dr. Shefali Juneja Director - Bilateral Agreements Ministry of Civil Aviation	Member
Mr. Sunil Kumar Director - Regulations & Information Directorate General of Civil Aviation	Member
R. P. Singh Adviser Embassy of India, Brussels	Member



Cargo Open Sky Policy

The designated airline(s) of each Contracting Party shall be entitled to operate all-Cargo services to any point(s) in the territory of the other Contracting Party, via any intermediate point(s) and beyond to any point(s) and vice versa, without any limitation on the number of services and/or type of aircraft, with full third, fourth and fifth freedom traffic rights, without exercising cabotage rights.

Co-operative Marketing Arrangements

1. When operating or holding out the agreed combination and all-cargo services on the specified route(s), any designated airline of either Contracting Party may enter into cooperative marketing arrangements, whether as the operating or marketing airline, with
 - (a) an airline or airlines of the same Contracting Party;
 - (b) an airline or airlines of the other Contracting Party; or
 - (c) an airline or airlines of a third country.
2. When a designated airline of a Contracting Party performs air services under cooperative marketing arrangements as the operating airline, the total capacity operated by that airline will be counted against the capacity entitlements of the Contracting Party designating the airline.
3. When a designated airline of a Contracting Party performs air services under cooperative marketing arrangements as the marketing airline, the total capacity offered by the former airline will not be counted against the capacity entitlements of the Contracting Party designating that airline.
4. All airlines operating or holding out the above services must hold the appropriate authority including route rights, traffic rights and capacity entitlement and meet the requirements normally applied to such arrangements.
5. The designated airlines of both Contracting Parties will, when holding services out for sale, in terms of code-share, blocked-space or other joint venture arrangements, make it clear to the purchaser at the point of sale which airline will be the operating airline on each sector of the service and with which airline(s) the purchaser is entering into a contractual relationship.



6. The designated airline(s) of either side shall be allowed to transfer traffic (i.e. starburst) between aircraft involved in the code-share operations without restriction as to number, size and type of aircraft.
7. In addition to the operating airline(s), the aeronautical authorities of each side may require the marketing airline(s) to file schedules for approval and also provide any other documents before commencement of air services under the co-operative marketing arrangements.
8. Before providing code sharing services, the code sharing partners shall agree as to which party shall be responsible for security, safety, facilitation, liability and other consumer related matters. Such an agreement shall be filed with the aeronautical authorities of both Parties before implementation of the code-share arrangements.

Routing Flexibility

Any intermediate and/or beyond point not specified on the Route Schedule may be served by a designated airline(s) without exercising fifth freedom traffic rights.

Intermodal Services

The airlines of each Contracting Party shall be permitted to employ, in connection with the international air transport of passenger and/or combination and all cargo services, any intermodal transport to or from any points in the territories of the Contracting Parties or in third countries. Airlines may elect to perform their own intermodal transport or to provide it through arrangements, including code share, with other carriers. Such intermodal services may be offered as a through service and at a single price for the air and intermodal transport combined, provided that passengers and shippers are informed as to the providers of the transport involved.



ARTICLE 12

Tariffs

1. For the purposes of these arrangements, the term “tariff” means the prices to be paid for the carriage of passengers, baggage and freight and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail.

2. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based upon commercial considerations in the market place due regard being paid to all relevant factors, including the cost of operation and reasonable profit. Neither Contracting Party shall require their airlines to consult other airlines about the tariffs they charge or propose to charge for services covered by these arrangements.

3. Each Contracting Party may require notification or filing of any tariff to be charged by its own designated airline or airlines. Neither Contracting Party shall require notification or filing of any tariff to be charged by the designated airline or airlines of the other Contracting Party. Tariffs may remain in effect unless subsequently disapproved under paragraphs 6 or 7 below.

4. Notwithstanding the foregoing, the Contracting Parties shall have the right intervene as to:

- (a) the protection of consumers from tariffs that are excessive due to the abuse of market power;
- (b) the prevention of tariffs whose application constitutes anti-competitive behaviour which has or is likely to have or is explicitly intended to have the effect of preventing, restricting or distorting competition or excluding a competitor from the route;
- (c) protect airlines from tariffs that are predatory or artificially low.

5. For the purposes set out in paragraph (4) of this Article, the aeronautical authorities of one Contracting Party may require the designated airlines of the other Contracting Party to provide information relating to the establishment of tariffs.

6. Each Contracting Party may unilaterally disallow any tariff filed or charged by one of its own designated airlines. However, such intervention shall be made only if it appears to the aeronautical authority of that Contracting Party that a tariff charged or proposed to be charged meets either of the criteria set out in paragraph 4 above.

7. Neither Contracting Party shall take unilateral action to prevent the coming into effect or continuation of a tariff charged or proposed to be charged by an airline of the other Contracting Party. If one Contracting Party believes that any such tariff is inconsistent with the considerations set out in paragraph (4) above, it may request consultations and notify the

other Contracting Party of the reasons for its dissatisfaction. These consultations shall be held not later than 14 days after receipt of the request. Without a mutual agreement the tariff shall take effect or continue in effect.



ANNEX

Route Schedule

Section A

The designated airline or airlines of the Government of the Republic of Malta shall be entitled to operate the agreed services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Malta	Any points	Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Bengaluru	Any points

Section B

The designated airline or airlines of the Government of the Republic of India shall be entitled to operate the agreed services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
India	Any points	Any points in Malta	Any points

Section C

Notes on the routes to be operated by the designated airline(s) of both Contracting Parties:

1. The designated airlines of each Contracting Party may on any or all flights omit calling at any of the intermediate points or beyond points provided that the agreed services on these routes begin/terminate at a point in the territory of the Contracting Party designating the airline.
2. Intermediate points and/or beyond points not specified may be served by the designated airlines of each Contracting Party without exercising fifth freedom traffic rights.
3. Intermediate points and/or beyond points to be operated with fifth freedom traffic rights on any of the specified routes are to be agreed by the aeronautical authorities of both Contracting Parties.
4. Two or more points in the territory of one Contracting Party shall not be served on the same flight by the designated airline(s) of the other Contracting Party.

Aviation Safety

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request.

2. If following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within thirty (30) days or such longer period as may be agreed shall be grounds for the application of Article 4 (Revocation or Suspension of Authorisation) of this Agreement.

3. Notwithstanding the obligations mentioned in Article 33 of the Convention it is agreed that any aircraft operated by the airline or airlines of one Contracting Party on services to or from the territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.

4. If any ramp inspection or series of ramp inspections gives rise to:

- (a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or
- (b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline of one Contracting Party in accordance with paragraph 3 of this Article above is denied by the representative of that airline, the other Contracting Party shall

be free to infer that serious concerns of the type referred to in paragraph 4 of this Article above arise and draw the conclusions referred in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorisation of an airline of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 or 6 of this Article above shall be discontinued once the basis for the taking of that action ceases to exist.

[8. *When the Republic of Malta has designated an airline whose regulatory control is exercised and maintained by another EU Member State, the rights of the other Contracting Party under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other EU Member State and in respect of the operating authorisation of that airline.]**



* Shall be applicable once the EU-India Horizontal Agreement enters into force

Fair Competition

1. The Contracting Parties acknowledge that it is their joint objective to have a fair and competitive environment and fair and equal opportunity for the airlines of both Contracting Parties to compete in operating the agreed services on the specified routes. Therefore, the Contracting Parties shall take all appropriate measures to ensure the full enforcement of this objective.

2. The Contracting Parties assert that free, fair and undistorted competition is important to promote the objectives of this Agreement and note that the existence of comprehensive competition laws and of an independent competition authority as well as the sound and effective enforcement of their respective competition laws are important for the efficient provision of air transport services. The competition laws of each Contracting Party addressing the issues covered by this Article, as amended from time to time, shall apply to the operation of the air carriers within the jurisdiction of the respective Contracting Party. The Contracting Parties share the objectives of compatibility and convergence of Competition law and of its effective application. They will cooperate as appropriate and where relevant on the effective application of competition law, including by allowing the disclosure, in accordance with their respective rules and jurisprudence, by their respective airline(s) or other nationals of information pertinent to a competition law action by the competition authorities of each other.

3. Nothing in this Agreement shall affect, limit or jeopardise in any way the authority and powers of the relevant competition authorities and courts of either Contracting Party (and of the European Commission), and all matters relating to the enforcement of competition law shall continue to fall under the exclusive competence of those authorities and courts. Therefore, any action taken pursuant to this Article by a Contracting Party shall be without prejudice to any possible actions taken by those authorities and courts.

4. Any action taken pursuant to this Article shall fall under the exclusive responsibility of the Contracting Parties and shall be exclusively directed towards the other Contracting Party and/or to airline(s) providing air transport services to/from the Contracting Parties. Such action shall not be subject to the dispute settlement procedure foreseen in Article 16.

Unfair competition

5. Each Contracting Party shall eliminate all forms of discrimination or unfair practices which would adversely affect the fair and equal opportunity of the airlines of the other Contracting Party to compete in providing air transport services.

Public subsidies and support

6. Neither Contracting Party shall provide or permit public subsidies or support to their respective airlines if these subsidies or support would significantly and adversely affect, in an unjustified way, the fair and equal opportunity of the airlines of the other Contracting Party to



compete in providing air transport services. Such public subsidies or support may include, but are not limited to: cross-subsidisation; the setting-off of operational losses; the provision of capital; grants; guarantees; loans or insurance on privileged terms; protection from bankruptcy; foregoing the recovery of amounts due; foregoing a normal return on public funds invested; tax relief or tax exemptions; compensation for financial burdens imposed by public authorities; and access on a discriminatory or non-commercial basis to air navigation or airport facilities and services, fuel, ground handling, security, computer reservation systems, slot allocation or other related facilities and services necessary for the operation of air services.

7. When a Contracting Party provides public subsidies or support in the sense of paragraph 6 above to an airline, it shall ensure the transparency of such measure through any appropriate means, which may include requiring that the airline identifies the subsidy or support clearly and separately in its accounts.

8. Each Contracting Party shall, at the request of the other Contracting Party, provide to the other Contracting Party within a reasonable time financial reports relating to the entities under the jurisdiction of the first Contracting Party, and any other such information that may be reasonably requested by the other Contracting Party to ensure that the provisions of this Article are being complied with. This may include detailed information relating to subsidies or support in the sense of paragraph 6 above. The submission of such information may be subject to its confidential treatment by the Contracting Party requesting access to the information.

9. Without prejudice to any action undertaken by the relevant competition authority and/or court for the enforcement of the rules referred to in paragraphs 5 and 6,

(a) if one Contracting Party finds that an airline is being subject to discrimination or unfair practices in the sense of paragraphs 5 or 6 above and that this can be substantiated, it may submit observations in writing to the other Contracting Party. After informing the other Contracting Party, a Contracting Party may also approach responsible government entities in the territory of the other Contracting Party, including entities at the central, regional, provincial or local level to discuss matters relating to this Article. Moreover, a Contracting Party may request consultations on this matter with the other Contracting Party with a view to solving the problem. Such consultations shall start within a period of thirty (30) days of the receipt of the request. In the meantime, the Contracting Parties shall exchange sufficient information to enable a full examination of the concern expressed by one of the Contracting Parties.

(b) if the Contracting Parties fail to reach a resolution of the matter through consultations within thirty (30) days from the start of consultations or consultations do not start within a period of thirty (30) days of the receipt of the request concerning an alleged violation of paragraphs 5 or 6 above, the Contracting Party which requested the consultation shall have the right to suspend the exercise of the rights specified in this



Agreement by the airline(s) of the other Contracting Party by refusing, withholding, revoking or suspending the operating authorisation/permit, or to impose such conditions as it may deem necessary on the exercise of such rights , or impose duties or take other actions. Any action taken pursuant to this paragraph shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary.

Antitrust

10. Each Contracting Party shall effectively apply antitrust laws in accordance with paragraph 2, and shall prohibit airline(s):

- (a) in conjunction with any other airline(s) to enter into agreements, take decisions or engage in concerted practices which may affect air transport services to/from that Contracting Party and which have as their object or effect the prevention, restriction or distortion of competition. This prohibition may be declared inapplicable where such agreements, decisions or practices contribute to improving the production or distribution of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and do not: (a) impose on the airlines concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such airlines the possibility of eliminating competition in respect of a substantial part of the services in question, and
- (b) to abuse a dominant position in a way which may affect air transport services to/from that Contracting Party.

11. Each Contracting Party shall entrust the enforcement of the antitrust rules referred to in paragraph 10 above exclusively to its relevant and independent competition authority and/or court.

12. Without prejudice to any action undertaken by the relevant competition authority and/or court for the enforcement of the rules referred to in paragraph 10, if one Contracting Party finds that an airline suffers from an alleged violation of paragraph 10 above and that this can be substantiated, it may submit observations in writing to the other Contracting Party. After informing the other Contracting Party, a Contracting Party may also approach responsible government entities in the territory of the other Contracting Party, including entities at the central, regional, provincial or local level to discuss matters relating to this Article. Moreover, a Contracting Party may request consultations on this matter with the other Contracting Party with a view to solving the problem. Such consultations shall start within a period of thirty (30) days of the receipt of the request. In the meantime, the Contracting Parties shall exchange sufficient information to enable a full examination of the concern expressed by one of the Contracting Parties.

13. If the Contracting Parties fail to reach a resolution of the matter through consultations within thirty (30) days from the start of consultations or consultations do not start within a period of thirty (30) days of the receipt of the request concerning an alleged violation of

paragraph 10, and provided the relevant competent competition authority or court has found an antitrust violation, the Contracting Party which requested the consultation shall have the right to suspend the exercise of the rights specified in this Agreement by the airline(s) of the other Contracting Party by refusing, withholding, revoking or suspending the operating authorisation/permit, or to impose such conditions as it may deem necessary on the exercise of such rights, or impose duties or take other actions. Any action taken pursuant to this paragraph shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary.

